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100TH CONGRESS *2d Session*	SENATE	REPORT 100-417

HATCH ACT REFORM AMENDMENTS OF 1988

REPORT

OF THE

COMMITTEE ON GOVERNMENTAL AFFAIRS UNITED STATES SENATE

TO ACCOMPANY

H.R. 3400

TO AMEND TITLE 5, UNITED STATES CODE, TO RESTORE TO FEDERAL CIVILIAN EMPLOYEES THEIR RIGHT TO PARTICIPATE VOLUNTARILY, AS PRIVATE CITIZENS, IN THE POLITICAL PROCESSES OF THE NATION, TO PROTECT SUCH EMPLOYEES FROM IMPROPER POLITICAL SOLICITATIONS, AND FOR OTHER PURPOSES

together with

MINORITY VIEWS

JULY 7, 1988.—Ordered to be printed

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HATCH ACT REFORM AMENDMENTS OF 1988

JULY 7, 1988.—Ordered to be printed

Mr. GLENN, from the Committee on Governmental Affairs, submitted the following

REPORT

together with

MINORITY VIEWS

[To accompany H.R. 3400]

The Committee on Governmental Affairs, to which was referred the bill (H.R. 3400) to amend Title 5, United States Code, to provide for Federal civilian employees to participate voluntarily, as private citizens, in the political processes of the Nation, to protect such employees from improper political solicitations, and for other purposes, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill as amended to pass.

I. PURPOSE

The purpose of the committee amendment to H.R. 3400 is to provide for Federal civilian employees to participate voluntarily, as private citizens, in the political processes of the Nation and to protect such employees and the General citizenry from improper political solicitations.

The committee amendment would retain and strengthen current law prohibitions against political activity "on the clock"—on Government time and in Government premises. It would broaden the current law to also provide Federal civilian and postal employees the opportunity to participate voluntarily in political activities as private citizens "off the clock" with two exceptions: the committee amendment would continue current law prohibitions against running for partisan elective office and against solicitation of political contributions from the general public.

II. Background

For more than a century, the idea that Federal employees should not be involved in partisan politics has been a fundamental civil service feature. This concept of neutrality was formalized in the Hatch Act, a wide ranging prohibition on political participation, which was passed in 1939. The Act represents the culmination of repeated efforts, which began in the early days of the nation, to establish a nonpartisan civil service. An underlying rationale for this idea is that efficiency in Government service requires a lack of partisanship in administration.

Most histories of the issue cite a congressional attempt in 1791 "to prevent Inspectors [of distilled spirits], or any officers under them, from interfering, either directly or indirectly, in elections, further than giving their own votes," as an early effort to separate civil servants from politics.[1] This amendment, which had been introduced in the House of Representatives on January 21, 1791, failed to pass by a vote of 37–21.[2]

Ten years later, President Thomas Jefferson addresed the principle of political neutrality in an Executive Circular. According to the Chief Executive, "the right of any officer to give his vote at elections as a qualified citizen is not meant to be restrained, nor, however given, shall it have any effect to his prejudice; but it is expected that he will not attempt to influence the votes of others, nor take any part in the business of electioneering, that being deemed inconsistent with the spirit of the Constitution and his duties to it." [3]

Following the Civil War, at a time when political patronage was supreme, a Civil Service Reform Movement developed which sought to substitute "merit" or "training" for party allegiance. This effort culminated with passage of the Civil Service Act of 1883, commonly referred to as the Pendleton Act and a landmark reform bill.[4] While the Pendleton Act is widely recognized as establishing the principle of civil service appointment based on merit and without regard to political considerations, it also prohibited political assessments, removals, and coercion. Additionally, political activity by Federal employees covered by the Act was barred from Government premises. A Civil Service Commission was created to administer the Act.

Civil Service Rule I, promulgated on May 7, 1883, under the authority of the Pendleton Act, prohibited merit system employees from "using [their] official authority or influence either to coerce the political action of any person or body or to interfere with any election." [5] An amendment to that rule was issued by President Theodore Roosevelt in a 1907 Executive order which expanded the prohibition to provide that, "no person in the Executive civil service shall use his official authority or influence for the purpose of

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[1] 2 Annals of Congress 1877, p. 1876.
[2] Ibid., p. 1877.
[3] Rosenbloom, David H. Federal Service and the Constitution: The Development of the Public Employment Relationship. Ithaca, New York: Cornell University Press, 1971. pp. 39–40.
[4] 22 United States Statutes at Large, Chapter 27.
[5] Richardson, James. Messages and Papers of the Presidents, Vol. 8, New York: Bureau of National Literature, 1899, p. 161.

interfering with an election or affecting the result thereof." [6] The amendment went on to specify that, "persons who by the provisions of these rules are in the competitive classified service, while retaining the right to vote as they please and to express privately their opinions on all political subjects, shall take no active part in political management or in political campaigns." [7] This rule served as the forerunner to the Hatch Act.

Despite these attempts to ensure the nonpartisanship of Federal employees, a neutral civil service was still not a reality; Civil Service Rule I covered only those employees in the classified service. During the Administration of President Franklin D. Roosevelt, however, the Federal "bureaucracy became more powerful and more central to the political life of the nation." [8] By the end of 1934, more than 60 new Federal agencies had been created but only five had been placed under the jurisdiction of the Civil Service Commission. The majority of these agencies were being staffed through patronage rather than merit.

This circumstance, as well as political events of the time, contributed to the passage of the Hatch Act in 1939. The salaries of employees in the Works Progress Administration were being illegally assessed and workers were being coerced to fund a senatorial campaign. This procedure became widely publicized through the release of an investigatory report by the Senate Special Committee to Investigate Senatorial Campaign Expenditures and use of Government funds. Another concern, which spurred passage of the Hatch Act, was that President Roosevelt would try to gain reelection in 1940 with the support of Federal employees beholden to him.

Following submission of the Special Committee report, Senator Carl Hatch, on March 20, 1939, introduced S. 1871, a bill to prevent pernicious political activities. This measure, commonly known as the Hatch Act, was signed into law on August 2, 1939. The measure has passed the Senate, with little deliberation, by voice vote on April 13, 1939, and the House by a vote of 241–134 on July 20, 1939. Debate in the House focused on the prohibition against Federal employees taking an active part in political management or political campaigns. The Hatch Act (53 Stat. 1147) folded in some 3,000 administrative determinations of the Civil Service Commission with regard to political activities.

Section 9(a) is widely regarded as the heart of the Act. That section states that it is unlawful for any Federal employee to use his official authority or influence to interfere with an election or affect its outcome. The section goes on to say that Federal employees may not take an active part in political management or political campaigns.

Until 1978, the Civil Service Commission administered the Hatch Act. With passage of the Civil Service Reform Act (P.L. 95–454) in 1978, however, authority for carrying out the Act was transferred to the Office of the Special Counsel (OSC) of the Merit Systems Protection Board. The OSC has published a list of activities which are permitted and prohibited under the Act. With regard to accept-

[6] Executive Order No. 642, June 3, 1907.
[7] Ibid.
[8] Rosenbloom, Federal Service and the Constitution, p. 103.

able political activity, Federal employees may, among other things, register and vote as they choose, privately express opinions about candidates and issues, and contribute money to political organizations. Federal employees are not, however, allowed, among other prohibitions, to solicit contributions for or endorse candidates in partisan elections, be candidates themselves in partisan elections, or distribute campaign material in partisan elections.

The Hatch Act has been the subject of intensive scrutiny throughout its history. On two occasions, the Supreme Court has considered the constitutionality of the Act and both times upheld the law. In 1947, in *United Public Workers* v. *Mitchell,* the Court said that if the President and Congress thought that Government efficiency was best achieved by having politically neutral civil servants that it had no constitutional objection.[9]

Again, in 1973, in *National Association of Letter Carriers* v. *United States Civil Service Commission,* the Supreme Court held that the law was passed to ensure that employment and advancement in the Government not be based on political performance and that Federal workers would not be pressured to be politically active. The Court left the door ajar with this decision, however, for Congress to "strike a different balance than it has." [10]

Another evaluation of the Act was conducted in 1966 by the Commission on Political Activity of Government Personnel which was created by Congress and charged with the task of extensively studying the question of Hatch Act reform. The Commission report recommended that the Act be clarified. It concluded that the Hatch Act was confusing, ambiguous, restrictive, and negative in character.[11] Among the changes which the Commission recommended were that limitations on political activity be clearly and specifically stated, that political participation, beyond those limitations, be permitted as fully for Federal employees as for all other citizens, and that the law on coercing public servants to participate in politics be strengthened.[12]

State and local Government employees, whose positions were funded in whole or in part by Federal monies, were prohibited from being politically active when the Hatch Act was amended in 1940.[13] With the passage of Public Law 93-443 in 1974, however, Congress lifted most of these restrictions but, retained those which prohibited running for elective office in a partisan campaign and the use of coercion.

The only other legislation designed to liberalize the Hatch Act which reached the President's desk was developed in 1975 and early 1976. Both the House and Senate passed Hatch Act reform measures which were quite similar to H.R. 3400; the House, by a vote of 288-119, on October 21, 1975, and the Senate by a vote of 47-32, on March 11, 1976. President Ford vetoed the legislation,

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[9] 330 U.S. 75 (1947).
[10] 413 U.S. 548 (1973).
[11] Report of Commission on Political Activity of Government Personnel, Vol. I, Findings and Recommendations, Washington: U.S. Govt. Print. Off., 1968, p. 19 and Jones, Charles O. Re-evaluating the Hatch Act: A Report on the Commission on Political Activity of Government Personnel, Public Administration Review, May/June, 1969, pp. 249-254.
[12] Report of Commission on Political Activity of Government Personnel, pp. 18-26.
[13] Stat. 767.

however, in a message dated April 12, 1976. In his veto statement, President Ford emphasized that "pressure could be brought to bear on Federal employees in extremely subtle ways beyond the reach of any anti-coercion statute so that they would inevitably feel compelled to engage in partisan political activity."[14] The House attempt to override the veto failed by a vote of 243–160, on April 29, 1976.

Several events combined to make amendment of the Hatch Act a major Civil Service issue in the 100th Congress. During the 1984 Presidential election the Presidents of three major Federal and Postal employee unions endorsed Walter Mondale's candidacy for the Presidency and in their union newsletters encouraged their memberships to vote for him. The unions involved were the American Federation of Government Employees, the National Association of Letter Carriers, and the American Postal Workers Union. All three presidents had been on leave from their Government jobs for more than 16 years. Nevertheless, the Office of Special Counsel brought suit against these men, asserting that they had violated the prohibition against active political participation. The Merit Systems Protection Board upheld the OSC finding and penalized the three presidents by suspending them from their jobs for 60 days. but, because they have been on leave from those jobs, the suspenion had no effect. The Board's decision was viewed as a way of establishing the principle of the case. Another concern for the unions was an OSC advisory opinion which said that if a Federal union had already endorsed a Presidential or congressional candidate, Federal employees who were union members could not be sued to conduct voter registration drives.

Finally, the vagueness of the statute continues to generate much concern. As one witness testified before the Governmental Affairs Committee:

> The most insidious aspect of the current Hatch Act is that its vagueness and complexity create a chilling effect. Federal employees often do not participate in permissable activities because they have heard so many conflicting opinions on what is and isn't allowed. We cannot even satisfactorily advise our members. Advisory opinions of the Special Counsel are not subject to judicial review. An employee must put his job in jeopardy in order to receive a final court decision on whether a particular action is permissable or impermissable under the Hatch Act.[15]

III. Legislative History

Legislation to amend the Hatch Act was introduced in the 100th Congress in the House of Representatives. On January 6, 1987, Representative Clay introduced H.R. 20, Federal Employees' Political Activities Act of 1987, and H.R. 221, Postal Service Employees' Political Activities Act of 1987. The measures were referred to the

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[14] Public Papers of the President of the United States, Gerald R. Ford, Book II, Washington, U.S. Govt. Print. Off., 1976–1977, p. 1115.

[15] Statement of Robert M. Tobias, National President, National Treasury Employees Union before Senate Governmental Affairs Committee, February 24, 1988. Hearings to be printed.

House Post Office and Civil Service Committee and to its Subcommittee on Civil Service. Hearings were held on the bills on May 21 and June 3, 1987. Following bipartisan discussions of the issues raised during the hearings, Representative Clay introduced a modified bill, H.R. 3400 (Federal Employees' Political Activities Act of 1987), on October 1, 1987. That legislation was favorably reported out of the Post Office and Civil Service Committee on October 15, 1987. H.R. 3400 was considered under suspension of the rules in the House on November 17, 1987, and was passed by a vote of 305–112.

On November 19, 1987, H.R. 3400 was sent to the Senate and referred to the Senate Governmental Affairs Committee. Hearings were held on the legislation on February 23 and 24, 1988. The following witnesses provided testimony:

FEBRUARY 23, 1988

Senator Dennis DeConcini, State of Arizona
Representative William Clay, State of Missouri
Representative Gene Taylor, State of Missouri
Representative Frank Horton, State of New York
Constance Horner, Director, Office of Personnel Management
Mary F. Wieseman, Special Counsel, Merit Systems Protection Board
John C. Keeney, Deputy Assistant Attorney General, Criminal Division, Department of Justice
Ron Swisher, National League of Postmasters
Earl W. Ogle, National Association of Postmasters of the United States
Rubin Handleman, National Association of Postal Supervisors
Joseph L. Fisher and Ray Kline, National Academy of Public Administration
Ann McBride, Common Cause
C.A. Howlett, Chamber of Commerce of the United States
Morton H. Halperin, American Civil Liberties Union
Vincent R. Sombrotto and Steve Trower, National Association of Letter Carriers
Dallas N. Fields, National Rural Letter Carriers Association
Moe Biller, American Postal Workers Union

FEBRUARY 24, 1988

Gerald W. McEntee, American Federation of State, County, and Municipal employees
Kenneth T. Blaylock, American Federation of Government Employees
Jim Peirce, National Federation of Federal Employees
Robert M. Tobias, National Treasury Employees Union
Edward Murphy, National Association of Government Employees
Julie Tagen, Federal Managers Association
John F. Tarburton, American Farm Bureau
Adele D. Spielberger, Federal Executive Institute Alumni Association
James T. Bland, Jr. Federal Bar Association

Proponents of the legislation emphasized the fact that the merit system has become so firmly entrenched in the American Civil

Service system that the existing Hatch Act is no longer required to protect employees from improper pressure form their superiors. These supporters also maintained that there is no connection between politically active Federal employees and the erosion of the merit system. Those in favor of change say that Federal employees, with their knowledge of the Government and its administration, could add muct to the public policy debate if they were allowed to be politically active. Furthermore, they emphasize that civil servants are ordinary citizens with interests as diverse as the nation and should be more fully allowed to participate in the Democratic process.

Opponents of the legislation were concerned that the civil service must be ever vigilant to the possibility that the career service could be supplanted by appointees rewarded for political favors. They were also concerned that the lawful administration of the Government could be undermined by the improper and partisan use of Government authority or through conflicts of interest. Amending the current law, opponents also believe, would increase the potential for building a powerful political operation based on the use of Government workers and give the civil service a definite political outlook.

On May 19, 1988, a committee amendment in the nature of a substitute to H.R. 3400 was approved by the Committee on Governmental Affairs by a vote of 9–3. Voting in the affirmative were Senators Glenn, Nunn, Levin, Sasser, Pryor, Mitchell, Bingaman, Heinz, and Stevens. Negative votes were cast by Senators Roth, Rudman, and Trible.

IV. Agency Views

The Committee notes the opposition of the Office of Personnel Management (OPM) and the Department of Justice to the committee amendment. Both agencies expressed their views that enactment of the amendment would result in the repoliticization of the Federal civil service.

V. Section-by-Section Analysis

Section 1 designates the act as the "Hatch Act Reform Amendments of 1988."

Section 2(a) amends Subchapter III of Chapter 73 of title 5, United States Code, which concerns political activities of Federal employees.

Section 7321 states that it is the policy of the Congress that employees should be encouraged to exercise fully, freely, and without fear of penalty or reprisal, and to the extent not expressly prohibited by law, their right to participate or to refrain from participating in the political processes of the Nation.

Section 7322 defines certain terms used in subchapter III of chapter 73.

The term "employee" means any individual employed or holding office in an Executive agency other than the General Accounting Office or in a competitive service position which is not in an Executive agency. The President and Vice President are excluded from

the definition of "employee." The term "employee" does not include members of the uniformed services.

[The Department of Defense has written its own restrictions on military political activities which are specified in DOD Directive 1344.10 entitled Political Activities by Members of the Armed Forces. Under section 3(b)(1)(C) of Public Law 96-191, the political activities which are prohibited under Title 5, Chapter 73, subchapter III are prohibited for General Accounting Office employees.]

The Term "partisan political office" means any office for which any candidate is nominated or elected as representing a party any of whose candidates for Presidential elector received votes in the last preceding election at which Presidential electors were selected, but excludes any office or position within a political party or affiliated organization.

The term "political contribution" means any gift, subscription, loan, advance, or deposit of money or anything of value, made for any political purpose; any contract, promise, or agreement, express or implied, whether or not legally enforceable, to make a contribution for any political purpose; any payment by any person, other than a candidate or a political party or affiliated organization, of compensation for the personal services of another person which are rendered to any candidate or political party or affiliated organization without charge for any political purpose; and the provision of personal services for any political purpose.

["Personal services" includes paid and unpaid services.]

Section 7323 permits employees to take an active part in political management or in political campaigns, except as prohibited. The section prohibits employees from using their official authority or influence to interfere with or affect the result of an election. It also prohibits employees from knowingly soliciting, accepting, or receiving a political contribution from any person unless that person is a member of the same Federal employee organization and the solicitation is for a contribution to the multicandidate political committee of the Federal employee organization. Additionally, the section prohibits employees from running for the nomination or as a candidate for election to a partisan political office.

[The prohibition against coercion includes pressuring employees to attend political functions. Employee groups can solicit contributions from their members for a political action committee (PAC) in accordance with Federal election laws. Such groups are currently allowed to operate PAC's. The prohibition on running for partisan political office is continued except that Federal employees could run for office within party organizations and affiliated groups such as convention delegate.]

Section 7324 prohibits political activities while on duty. Subsection (a) provides that an employee may not engage in political activity while on duty, in any room or building occupied in the discharge of official duties by an employee or office holder of the Government or any agency or instrumentality thereof, while wearing a uniform or official insignia which identifies his office or position, or using any vehicle owned or leased by the Government or any agency or instrumentality, thereof.

[Politics on the job, including the wearing of political buttons, is prohibited. Involvement in politics after work hours is allowed except that the general solicitation of contributions is prohibited.]

Subsection (b) provides that certain high level political appointees may engage in political activity otherwise prohibited by subsection (a) if the costs associated with that political activity are not paid for by money derived from the Treasury of the United States. Employees covered by this section must be in positions in which the duties and responsibilities continue outside normal duty hours and while away from the normal duty post. Additionally, these employees must be paid from the Executive Office of the President appropriation or be appointed by the President, by and with the advice and consent of the Senate, be in a position which is located within the United states, and be determining policies to be pursued by the United States in relations with foreign powers or in the nationwide administration of Federal laws.

Section 2(b) makes certain technical and conforming amendments to other provisions of title 5, United States Code. Subsection (b)(1) amends section 3302(2) by deleting references to sections in subchapter III of chapter 73 which have been deleted by this bill.

Subsection (b)(2) conforms the section analysis for subchapter III of chapter 73 of title 5, United States Code, to the amendments made in section 2(a) of the bill.

Section 3 makes certain conforming amendments to title 18, United States Code. Subsection 3(a) amends section 602 of title 18, relating to solicitation of political contributions. Paragraph (a)(3) adds a new subsection (b) to section 602 which provides that the criminal prohibition of solicitation of political contributions applies only to the activity of employees covered under H.R. 3400 to the extent that the activities violate sections 7323 or 7324. Subsection 3(b) makes a similar conforming amendment to section 603 of title 18, concerning making political contributions. A new subsection (c) is added to section 603 which states that the criminal restriction on political contributions applies only to activities of employees covered under H.R. 3400 to the extent that the activities violate section 7323 or 7324.

Section 4 makes a conforming amendment to the provisions of the Voting Rights Act of 1965 (Public Law 89-110) relating to restrictions on examiners appointed to administer the Voting Rights Act.

Section 5 amends chapter 15 of title 5, United States Code. Subsection 5(a) includes District of Columbia employees under coverage of the chapter. Subsection 5(b) repeals section 675(e) of the Community Services Block Grant Act.

Section 6 provides that employees of the United States Postal Service and of the Postal Rate Commission are covered by the amendments made by section 2 of H.R. 3400.

Section 7 provides that the amendments made by the Act shall take effect on January 1, 1989. Subsection 7(b) provides that the amendments made by the Act shall not affect any penalty imposed or any action to enforce a penalty under the preceding provisions of law. Subsection 7(c) provides that no provision of the Act shall affect any proceedings filed on or before the effective date of the

act. Ordered under those proceedings and appeals from such proceedings shall be conducted as if the Act had not been enacted.

VI. Regulatory Impact of Legislation

Paragraph 11(b)(1) of rule XXVI of the Standing Rules of the Senate requires that each report accompanying a bill evaluate "the regulatory impact which would be incurred in carrying out the bill."

The Committee notes that the current Hatch Act incorporates into law more that 3,000 administrative rulings rendered prior to 1940 and that one of the most predominant criticisms of present law is its ambiguity in defining the term "political activity." Because enactment of H.R. 3400 would not result in any additional regulation of individuals and would simplify present law by eliminating conflicting administrative rulings, the Committee anticipates a beneficial regulatory reduction.

VII. Changes in Existing Law

Rule XXVI of the Standing Rules of the Senate requires that changes in existing law made by the bill, as reported, be detailed in the Committee Report accompanying the bill. Changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 5, UNITED STATES CODE

* * * * * *

PART II—CIVIL SERVICE FUNCTIONS AND RESPONSIBILITIES

* * * * * *

CHAPTER 15—POLITICAL ACTIVITY OF CERTAIN STATE AND LOCAL EMPLOYEES

* * * * * *

§ 1501. Definitions

For the purpose of this chapter—

(1) "State" means the District of Columbia and a State or territory or possession of the United States;

* * * * * *

PART III—EMPLOYEES

* * * * * * *

Subpart B—Employment and Retention

* * * * * * *

CHAPTER 33—EXAMINATIONS, SELECTION, AND PLACEMENT

SUBCHAPTER I—EXAMINATION, SELECTION, AND APPOINTMENT

* * * * * * *

§ 3302. Competitive service; rules

The President may prescribe rules governing the competitive service. The rules shall provide, as nearly as conditions of good administration warrant, for—

(1) necessary exceptions of positions from the competitive service; and

(2) necessary exceptions from the provisions of sections 2951, 3304(a), 3321, 7202, [7203, 7321, and 7322] *and 7203* of this title.

Each officer and individual employed in an agency to which the rules apply shall aid in carrying out the rules.

* * * * * * *

Subpart F—Labor-Management and Employee Relations

* * * * * * *

CHAPTER 73—SUITABILITY, SECURITY, AND CONDUCT

* * * * * * *

[SUBCHAPTER III—POLITICAL ACTIVITIES

[7321. Political contributions and services.
[7322. Political use of authority or influence; prohibition.
[7323. Political contributions; prohibition.
[7324. Influencing elections; taking part in political campaigns; prohibitions; exceptions.
[7325. Penalties.
[7326. Nonpartisan political activity permitted.
[7327. Political activity permitted; employees residing in certain municipalities.
[7328. General Accounting Office employees.]

SUBCHAPTER III—POLITICAL ACTIVITIES

7321. Political participation.
7322. Definitions.
7323. Political activity authorized; prohibitions.
7324. Political activities on duty; prohibition.

* * * * * * *

[SUBCHAPTER III—POLITICAL ACTIVITIES

[§ 7321. Political contributions and services

[The President may prescribe rules which shall provide, as nearly as conditions of good administration warrant, that an employee in an Executive agency or in the competitive service is not obliged, by reason of that employment, to contribute to a political fund or to render political service, and that he may not be removed or otherwise prejudiced for refusal to so so.

[§ 7322. Political use of authority or influence; prohibition

[The President may prescribe rules which shall provide, as nearly as conditions of good administration warrant, that an employee in an Executive agency or in the competitive service may not use his official authority or influence to coerce the political action of a person or body.

[§ 7323. Political contributions; prohibition

[An employee in an Executive agency (except one appointed by the President, by and with the advice and consent of the Senate) may not request or receive from, or give to,. an employee, a Member of Congress, or an officer of a uniformed service a thing of value for political purposes. An employee who violates this section shall be removed from the service.

[§ 7324. Influencing election; taking part in political campaigns; prohibitions; exceptions

[(a) An employee in an Executive agency or an individual employed by the government of the District of Columbia may not—

[(1) use his official authority or influence for the purpose of interfering with or affecting the result of an election; or

[(2) take an active part in political management or in political campaigns.

For the purpose of this subsection, the phrase "an active part in political management or in political campaigns" means those acts of political management or political campaigning which were prohibited on the part of employees in the competitive service before July 19, 1940, by determinations of the Civil Service Commission under the rules prescribed by the President.

[(b) An employee or individual to whom subsection (a) of this section applies retains the right to vote as he chooses and to express his opinion on political subjects and candidates.

[(c) Subsection (a) of this section does not apply to an individual employed by an educational or research institution, establishment, agency, or system which is supported in whole or in part by the District of Columbia or by a recognized religious, philanthropic, or cultural organization.

[(d) Subsection (a)(2) of this section does not apply to—

[(1) an employee paid from the appropriation for the office of the President;

[(2) the head or the assistant head of an Executive department or military department;

[(3) an employee appointed by the President, by and with the advice and consent of the Senate, wl o determines policies

to be pursued by the United States in its relations with foreign powers or in the nationwide administration of Federal laws;

[(4) the Mayor of the District of Columbia, the member of the Council of the District of Columbia, or the chairman of the Council of the District of Columbia, as established by the District of Columbia Self-Government and Governmental Reorganization Act; or

[(5) the Recorder of Deeds of the District of Columbia.

[§ 7325. Penalties

[An employee or individual who violates section 7324 of this title shall be removed from his position, and funds appropriated for the position from which removed thereafter may not be used to pay the employee or individual. However, if the Merit Systems Protection Board finds by unanimous vote that the violation does not warrant removal, a penalty of not less than 30 days' suspension without pay shall be imposed by direction of the Board.

[§ 7326. Nonpartisan political activity permitted

[Section 7324(a)(2) of this title does not prohibit political activity in connection with—

[(1) an election and the preceding campaign of none of the candidates is to be nominated or elected at that election as representing a party any of whose candidates for presidential elector received votes in the last preceding election at which presidential electors were selected; or

[(2) a question which is not specifically identifed with a National or State political party or political party of a territory or possession of the United States.

For the purpose of this section, questions relating to constitutional amendments, referendums, approval of municipal ordinances, and others of a similar character, are deemed not specifically identified with a National or State political party or political party of a territory or possession of the United States.

[§ 7327. Political activity permitted; employees residing in certain municipalities

[(a) Section 7324(a)(2) of this title does not apply to an employee of The Alaska Railroad who resides in a municipality on the line of the railroad in respect to political activities involving that municipality.

[(b) The Office of Personnel Management may prescribe regulations permitting employees and individuals to whom section 7324 of this title applies to take an active part in political management and political campaigns involving the municipality or other political subdivision in which they reside, to the extent the Office considers it to be in their domestic interest, when—

[(1) the municipality or political subdivision is in Maryland or Virginia and in the immediate vicinity of the District of Columbia, or is a municipality in which the major of voters are employed by the Government of the United States; and

[(2) the Office determines that because of special or unusual circumstances which exist in the municipality or political sub-

division it is in the domestic interest of the employees and individuals to permit that political participation.

[§ 7328. General Accounting Office employees

[The preceding provisions of this subchapter shall not apply to employees of the General Accounting Office.]

SUBCHAPTER III—POLITICAL ACTIVITIES

§ 7321. Political participation

It is the policy of the Congress that employees should be encouraged to exercise fully, freely, and without fear of penalty or reprisal, and to the extent not expressly prohibited by law, their right to participate or to refrain from participating in the political processes of the Nation.

§ 7322. Definitions

"For the purpose of this subchapter—

(1) "employee" means any individual, other than the President and the Vice President, employed or holding office in—

(A) an Executive agency other than the General Accounting Office; or

(B) a position within the competitive service which is not in an Executive agency;

but does not include a member of the uniformed services;

(2) "partisan political office" means any office for which any candidate is nominated or elected as representing a party any of whose candidates for Presidential elector received votes in the last preceding election at which Presidential electors were selected, but shall exclude any office or position within a political party or affiliated organization; and

(3) "political contribution"—

(A) means any gift, subscription, loan, advance, or deposit of money or anything of value, made for any political purpose;

(B) includes any contract, promise, or agreement, express or implied, whether or not legally enforceable, to make a contribution for any polticial purpose;

(C) includes any payment by any person, other than a candidate or a political party or affiliated organization, or compensation for the personal services of another person which are rendered to any candidate or political party or affiliated organization without charge for any political purpose; and

(D) includes the provision of personal services for any political purpose.

§ 7323. Political activity authorized; prohibitions

An employee may take an active part in political management or in political campaigns, except an employee may not—

(1) use his official authority or influence for the purpose of interfering with or affecting the result of an election;

(2) knowingly solicit, accept, or receive a political contribution from any person, unless such person is—

(A) a member of the same Federal employee organization; and

(B) the solicitation is for a contribution to the multicandidate poltical committee (as defined under section 315(a)(4) of the Federal Election Campaign Act of 1971 (2 U.S.C. 441a(A)(4))) of such Federal employee organization; or

(3) run for the nomination or as a candidate for election to a partisan political office.

§ 7324. Political activities on duty; prohibition

(a) An employee may not engage in political activity—

(1) while the employee is on duty;

(2) in any room or building occupied in the discharge of official duties by an individual employed or holding office in the Government of the United States or any agency or instrumentality thereof;

(3) while wearing a uniform or official insignia identifying the office or position of the employee; or

(4) using any vehicle owned or leased by the Government of the United States or any agency or instrumentality thereof.

(b)(1) An employee described in paragraph (2) of this subsection may engage in political activity otherwise prohibited by subsection (a) if the costs associated with that political activity are not paid for by money derived from the Treasury of the United States.

(2) Paragraph (1) applies to an employee—

(A) the duties and responsibilities of whose position continue outside normal duty hours and while away from the normal duty post; and

(B) who is—

(i) an employee paid from an appropriation for the Executive Office of the President; or

(ii) an employee appointed by the President by and with the advice and consent of the Senate, whose position is located within the United States, who determines policies to be pursued by the United States in relations with foreign powers or in the nationwide administration of Federal laws.

TITLE 18, UNITED STATES CODE

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PART I—CRIMES

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§ 602. Solicitiation of political contributions

(a) It shall be unlawful for—

(1) a candidate for the Congress;

(2) an individual selected to or serving in the office of Senator or Representative in, or Delegate or Resident Commissioner to, the Congress;

(3) an officer or employee of the United States or any department or agency thereof; or

(4) a person receiving any salary or compensation for services from money derived from the Treasury of the United States; [to knowingly solicit, any contribution within the meaning of section 301(8) of the Federal Election Campaign Act of 1971 from any other such officer, employee, or person. Any person who violates this section shall be fined not more than $5,000 or imprisoned not more than three years, or both.] *to knowingly solicit any contribution within the meaning of section 301(8) of the Federal Election Campaign Act of 1971 from any other such officer, employee, or person. Any person who violates this section shall be fined under this title or imprisoned not more than three years, or both.*

(b) The prohibition in subsection (a) shall not apply to any activity of an employee (as defined in section 7322(1) of title 5) or any individual employed in or under the United States Postal Service or the Postal Rate commission, unless that activity is prohibited by section 7323 or 7324 of that title.

§ 603. Making political contributions

(a) * * *

* * * * * * *

(c) The prohibition in subsection (a) shall not apply to any activity of an employee (as defined in section 7322(1) of title 5) or any individual employed in or under the United States Postal Service or the Postal Rate Commission, unless that activity is prohibited by section 7324 of that title.

* * * * * * *

SECTION 6 OF THE VOTING RIGHTS ACT OF 1965

SEC. 6. Whenever (a) a court has authorized the appointment of examiners pursuant to the provisions of section 3(a), or (b), unless a declaratory judgment has been rendered under section 4(a), the Attorney General certifies with respect to any political subdivision named in, or included within the scope of, determinations made under section 4(b) that (1) he has received complaints in writing from twenty or more residents of such political subdivision alleging that they have been denied the right to vote under color of law on account of race or color, or in contravention of the guarantees set forth in section 4(f)(2), and that he believes such complaints to be meritorious, or (2) that in his judgment (considering, among other factors, whether the ratio of nonwhite persons to white persons registered to vote within such subdivision appears to him to be reasonably attributable to violations of the fourteenth or fifteenth amendment or whether substantial evidence exists that bona fide efforts are being made within such subdivision to comply with the fourteenth or fifteenth amendment), the appointment of examiners is otherwise necessary to enforce the guarantees of the fourteenth or fifteenth amendment, the Civil Service Commission shall appoint as many examiners for such subdivision as it may deem ap-

propriate to prepare and maintain lists of persons eligible to vote in Federal, State, and local elections. Such examiners, hearing officers provided for in section 9(a), and other persons deemed necessary by the Commission to carry out the provisions and purposes of this Act shall be appointed, compensated, and separated without regard to the provisions of any statute administered by the Civil Service Commission, and service under this Act shall not be considered employment for the purposes of any statute administered by the Civil Service Commission, except [the provisions of section 9 of the Act of August 2, 1939, as amended (5 U.S.C. 118i), prohibiting partisan political activity] *the provisions of subchapter III of chapter 73 of title 5, United States Code, relating to political activities: Provided,* That the Commission is authorized, after consulting the head of the appropriate department or agency, to designate suitable persons in the official service of the United States, with their consent, to serve in these positions. Examiners and hearing officers shall have the power to administer oaths.

TITLE 42, UNITED STATES CODE

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(e) POLITICAL ACTIVITIES BY EMPLOYEES OF RECIPIENTS.—[For purposes of chapter 15 of Title 5, any nonprofit private organization receiving assistance under this chapter which has responsibility for planning, developing, and coordinating community antipoverty programs shall be deemed to be a State or local agency. For purposes of clauses (1) and (2) of section 1502(a) of such title, any such organization receiving assistance under this chapter shall be deemed to be a State or local agency.]

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VIII. COST ESTIMATE OF LEGISLATION

Pursuant to section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office (CBO) has reviewed the cost implications of H.R. 3400. The following is CBO's estimate of the potential costs of this legislation:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 21, 1988.

Hon. JOHN GLENN,
Chairman, Committee on Governmental Affairs,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 3400, the Hatch Act Reform Amendments of 1988, as ordered reported by the Senate Committee on Governmental Affairs, May 19, 1988. The bill would not result in costs or savings to the federal government, and would not affect the budgets of state or local governments.

H.R. 3400 would allow federal employees to participate in political activities, with certain restrictions. Because the bill would not

affect the activities of federal agencies, it is not expected to affect federal spending.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

JAMES L. BLUM,
Acting Director.

IX. Minority Views

MINORITY VIEWS OF SENATORS ROTH, RUDMAN, AND TRIBLE

In 1976 President Ford vetoed legislation similar to that reported because it was "bad for the employee, bad for the government, and bad for the public."

This legislation is bad for the federal employee because it unleashes irresistible pressures to become a captive soldier in political armies inside and outside the government.

This legislation is bad for the federal government because it would undercut the neutral, nonpartisan administration of programs by civil servants. It would replace merit with politics.

This legislation is bad for the public because it would foster the creation of employee interest groups inside the government that might sabotage the will of the American people. The federal workforce is the servant of the American people, to act as their instrument not as their foil.

Proponents of this legislation ignore the adverse impact of this legislation on the government and on the American people and focus attention exclusively on the federal employee. They would have you believe that the Hatch Act oppresses federal employees and that H.R. 3400 would set them free. The truth is the very opposite. The Hatch Act protects federal employees from inside and outside coercion. And H.R. 3400 would, in practice, restrict their freedom.

A similar debate might be held regarding section 603 of title 18, United States Code. That provision, among other things, forbids Senate staff from making campaign contributions to their respective Senators. This provision, it might be argued, robs Senate staffers of the right to contribute to Senate campaigns, a right enjoyed by the entire American populus except for the oppressed few.

But we all know why this provision was passed and has been retained on the books. Section 603 was not enacted to oppress, or even to trade employee rights for the honor and privilege of government service, but to protect the employee. Were it not for section 603 and similar provisions, it might become "expected" of Senate staffers to make such contributions. Since it is not possible to outlaw expectations, the only way to protect Senate staffers is to prohibit this form of political activity.

Similar expectations will arise if Hatch Act protections are removed. It does little to solve the problem for H.R. 3400 to declare against "coercion." When King Henry II wondered aloud whether there was anyway to be rid of "this troublesome priest" and four knights, having overheard him, rode off to murder Thomas A. Becket in Canterbury Cathedral, were those knights coerced? Or

was it just another historic example of subordinates "volunteering" to please their superiors?

After two centuries of trial and error, America has come to appreciate the genius of a politically neutral federal workforce responsible to an elected President and his political appointees. This system allows government to be both responsive to popular will yet fair and impartial in the administration of our laws. This system rests squarely upon the Hatch Act. It is the reason why a politically neutral workforce can function subordinate to political appointees without itself becoming politicized. The reported bill is a serious threat to the delicate balance of this much admired system.

In his veto message in 1976, President Ford stated that if legislation like H.R. 3400 became law, "pressure could be brought to bear on Federal employees in extremely subtle ways beyond the reach of any anti-coercion statute so that they would inevitably feel compelled to engage in partisan political activity." In our opinion, this would be the inevitable result of this legislation. Proponents of H.R. 3400 seem oblivious to the expectations, the pressures, and the coercion that will spring forth if this legislation is enacted. They rely on one clause of the bill which tracks verbatim a 1907 Executive Order that "no person in the Executive civil service shall use his official authority or influence for the purpose of interfering with an election or affecting the result thereof."

As later history was to show, the 1907 Executive Order did not adequately protect federal employees. Its terms, like the provision in H.R. 3400, do not address expectations. Its terms do not address subtle pressures. Its terms do not address post-election reprisals, whether they are direct or indirect, harsh or subtle, flagrant or disguised. In fact, if you read the provision carefully, it may not even address the outright coercion of a federal employee. Finally, it does not address the expectations, pressures, and coercive efforts directed by non-governmental individuals and groups against federal employees.

These lapses are not the fault of the 1907 Executive Order. That Order was merely an addendum to Civil Service Rule I which prohibited employees from taking "an active part in political management or political campaigns." H.R. 3400 overturns Civil Service Rule I—the fundamental safeguard of employees—and retains the addendum. The addendum was never intended to stand alone. No wonder the employee is left so exposed to political pressure under H.R. 3400!

The point is not only that H.R. 3400 contains a poor formulation of protection for the federal employee but also that no formulation can be adequate once employees are free to engage in partisan political activity. No drafting technique can overcome the proclivities of human nature.

Once employees are free to engage in partisan political activity, it will only be human nature for them to believe that it would please their politically appointed superior to exercise their new political rights under H.R. 3400 in a manner that pleases the superior. It will only be human nature for employees to aspire to promotions and salary increases. It will only be human nature for employees to try to get an edge on their competition by engaging in the partisan politics of the superior. It will only be human nature

for other employees who had not engaged in the partisan politics of the superior to feel it is necessary to do so to eliminate the edge of their competitors.

Since it is only human nature to try to get ahead, employees will engage in political activity pleasing to the political hierarchy. King Henry's knights were simply trying to please, trying to get ahead. Human nature does not change. The majority is oblivious to the painful lessons of the past.

The Hatch Act has served us well. In spite of all the efforts of Presidents through the years and in spite of all the civil service regulations, we never licked the problem of the spoils system until Congress enacted the Hatch Act in 1939. Since then, the Hatch Act has protected the federal employee, fostered a more efficient and effective workplace, and enhanced the confidence of the citizenry in the fairness of their government. It has been good for the employee, good for the government, and good for the public.

Why do we now in considering H.R. 3400 risk a return to the spoils systems? Why do we risk repealing the only remedy that has worked? Why do we risk undermining the merit system? If one reads the majority report, the answer is clear: After the 1984 election the Office of Special Counsel brought a controversial lawsuit against the presidents of three employee unions, all federal employees on leave, because in their newsletters they exhorted their membership to vote for Mondale.

Each Senator will decide for himself whether this is sufficient cause to scuttle the only effective remedy for the spoils system this nation has known. In addition, it should be noted that there has been no clamor for change. No polls of government employees have been offered to show their desire for change. In fact, a very recent poll in Government Executive magazine reveals that over 60% of federal employees *oppose* H.R. 3400.

While the unions and postal groups support change, the weight of other testimony stands in opposition to this bill. The Administration, Common Cause, the American Bar Association, the National Academy of Public Administration, the Chamber of Commerce, the American Farm Bureau, and the Senior Executive Association have all voiced strong opposition to this legislation. In addition, scholars and former government officials have likewise opposed the bill. And as might be expected, organizations that typically oppose union political goals have also fought this legislation.

But the central issue here is not whether federal employee unions and groups should have their way. The question before us is not so parochial. Rather the issue is the quality of government service that the American people should receive and the protection from political pressure that the federal employee should enjoy. That is why organizations not normally outspoken on union issues have come forward to voice vigorous opposition to H.R. 3400.

The only non-employee organization known to us that supports this legislation is the American Civil Liberties Union. That organization believes that the Hatch Act violates the First Amendment. However, on more than one occasion, the Supreme Court has specifically rejected the ACLU argument. Thus, there is no constitutional imperative to vote for H.R. 3400. The only constitutional issue before us is the claim of the Administration that H.R. 3400

violates the constitution by unduly restricting the activities of political appointees.

The final argument of proponents of H.R. 3400 is that federal employees are confused by the regulations and opinions issued under the Hatch Act. The confusion, it is argued, has a chilling effect on permissible political activity.

We believe this argument has some merit. However, we do not understand the logic of the argument that if the implementation of a law is confusing, the law should be repealed. One would hate to see this argument applied to the Bill of Rights, which has for nearly two centuries raised an endless stream of litigation designed to clarify its application. The appropriate response to the argument is to do what is necessary to eliminate the confusion.

Proponents believe they have answered the problem of how to draw a bright line between permissible and impermissible conduct. They would permit partisan political activity "off duty" and prohibit such conduct "on duty." Simple, isn't it? The problem is that the bright line between on-duty and off-duty has little to do with Hatch Act concerns. As the Federal Bar Association, another detached organization opposing this legislation, made clear to the committee, the concern is whether expectations, pressures, and coercion are imposed upon the federal employee and not the time of day the employee engages in partisan political activity. The fact that an employee engages in political conduct off-duty does not answer the question whether he has been pressured on-duty. The bright line of H.R. 3400 is a mirage.

Since our analysis has led us to conclude that the Hatch Act is good for the employee, good for the government, and good for the public and since we believe that claims of confusion over the implementation of the Act have some merit, we propose that in lieu of this legislation the Office of Personnel Management be directed to issue new regulations that would clarify and simplify the conflicting and bewildering guidance that has been given to federal employees with respect to the Hatch Act. We believe that this proposal would satisfy the best argument of proponents for change without risking the benefits of the Hatch Act for American society. Moreover, we are assured that H.R. 3400, if passed, would be vetoed. We believe that our proposal, in contrast, would not be vetoed.

The choice for the Senate in the remaining days of this Congress is clear whether to do some good or whether to make a major mistake.

The Committee substitute is no compromise. No compromise was made with Senators, like ourselves, who oppose this legislation. No compromise was made with the Administration. Nor was any compromise made with any of the various outside institutions and organizations that are opposed.

The Committee substitute tracks the House version in all its particulars with only two exceptions. Whereas the House version permits federal employees to engage in virtually any political activity "off-duty," the Committee substitute would not permit an employee, 1) to run for partisan political office or 2) to solicit campaign contributions except from fellow employee-members of a union or group for their own PAC. While it is true that the substitute is less

drastic, it can not accurately be called a "mild" or "toned down" change in the Hatch Act.

In order to understand this, one must compare what federal employees may do under the Hatch Act with what they may do under the Committee substitute and the House version:

WHAT EMPLOYEES MAY DO NOW

1. Vote.
2. Contribute money.
3. Express their views (although not in a concerted way to elicit support for a candidate or party).
4. Attend conventions and rallies but only as a spectator.
5. Wear buttons (off duty or, subject to various agency restrictions, on duty).

WHAT ELSE EMPLOYEES COULD DO UNDER THE COMMITTEE SUBSTITUTE

1. Hold office in a political party.
2. Distribute campaign literature and solicit votes (off duty).
3. Organize and participate in phone banks (off duty).
4. Organize and participate in political meetings (off duty).
5. Publicly endorse candidates and urge others to support them (off duty).
6. Solicit contributions to the PAC of a Federal employee organization to which both the employee and the donor belong (off duty).

WHAT ELSE EMPLOYEES COULD DO UNDER THE HOUSE VERSION

1. Run for and hold public office (off duty).
2. Solicit contributions (off duty).

But for the provisions dealing with running for office and soliciting contributions, the House bill and the committee substitute are identical. Both renounce the principle of a neutral, nonpolitical federal workforce. Both are oblivious to the expectations, pressures, and coercion that would be borne with this legislation. Both would strike the keystone from the arch of our merit system. Both would scuttle the only remedy that has worked to vanquish the evils of the spoils system.

During Committee consideration there was some thought given to retaining the Hatch Act protections for some federal employees but not others. For example, few of us would find it appropriate for employees of the Federal Election Commission to engage in partisan politicking at night and serve as umpires over partisan politics by day. In addition, some Members of the committee are concerned about "sensitive" employees such as those in the intelligence community or in law enforcement. But the Committee took no action to segregate any class of employees. Any effort to protect any class of employees—employees too important to be left unprotected—only underscores what bad policy this legislation embodies for all federal employees. All employees are important. None of them should be sacrificed to the ravages of this legislation.

This legislation should be rejected.

W.V. ROTH, Jr.
WARREN B. RUDMAN.
PAUL TRIBLE.

MINORITY VIEWS OF SENATOR WARREN RUDMAN

The minority views I signed along with Senator Roth and Senator Trible thoroughly document the many reasons to vote against H.R. 3400, and I shall not repeat those here. I would, however, like to stress some of the points touched on in those views.

First, the casual observer viewing the vote of the Committee on Governmental Affairs and the Administration's stated opposition to the measure may come to the conclusion that this issue is subject to partisan or ideological divisions. That is not the case.

During the late 1970's, the last time Hatch Act "reform" was given any serious consideration, one of the most noted opponents of predecessor bills was Senator Ribicoff of Connecticut, a highly respected liberal and a former Chairman of this Committee. Moreover, legislation to weaken the Hatch Act is opposed by an unusual and diverse coalition of organizations including Common Cause, the American Bar Association, the Chamber of Commerce, and the American Farm Bureau Federation. In fact, the only non-federal employee organization to support weakening current law is the American Civil Liberties Union which has long held the position, notwithstanding Supreme Court decisions to the contrary, that the current law is unconstitutional. Clearly, concern for the preservation of the integrity of the civil service transcends ideology. (As the joint minority views document, it is also a mistake to assume that all federal employees support this change.)

Second, this is not an argument about abstract public policy positions. H.R. 3400 will, if enacted, have real consequences on the lives of civil servants and the quality of service provided to the public.

One need merely look at recent developments in Arlington, Virginia for a preview of life in the federal government without a strong Hatch Act. A recent election in that county featured a sheriff being challenged by one of his former deputies. Following the incumbent's reelection, he gave a "retire now or be demoted" ultimatum to seven of his deputies who had publically supported the challenger.

This action, now being challenged in court, is noteworthy only for the sheriff's bluntness. In more subtle forms, it will become the norm if H.R. 3400 becomes law. Politics is an emotionally charged enterprise, and it is all to tempting to use whatever tools are available.

Those who argue that federal law now provides adequate protection for federal employees are ignoring the innumerable ways in which supervisors can retaliate against subordinates for taking part or *refusing to become involved* in political activity. Such steps can involve promotions, job ratings, and job assignments, to name a few. The current Hatch Act was in part a response to documented abuses in the Works Progress Administration which affected indi-

vidual civil servants and public integrity in the process of government.

The temptation to allow political considerations to interfere with what are supposed to be apolitical, merit-based decisions will not just lie with an incumbent administration or individual public servants, but also with Members of Congress who are continually running campaigns supported in large part by volunteers. It is easy to imagine some Members, in an effort to help a federal employee who worked on their campaign, putting pressure on federal agencies to give those individuals favored treatment. Civil service protections and statutory requirements for decisions on the merits are not much of a hurdle in the wide range of matters where subjective factors must be weighed.

George Santayana's famous remark, "those who cannot remember the past are condemned to repeat it," applies with full force to this measure. Enactment of H.R. 3400 will place the federal government, and all who its affects, firmly on an inadvisable course. And, after a few scandals, the Senate will be debating legislation to return to today's status quo. For these reasons, and those stated elsewhere, H.R. 3400 should be rejected.

WARREN B. RUDMAN.

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